WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This section explains the use tax and the use tax exemptions provided by RCW 82.12.0254 which apply to for hire motor carriers operating in interstate or foreign commerce. For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions which apply to motor carriers for the purchase of vehicles and parts under RCW 82.08.0262 and 82.08.0263.

(2) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also WAC 458-20-178.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales or use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use tax.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate hauling for hire.

(c) The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use a twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, 1996, the taxpayer must meet the substantial use test for this vehicle for either the period January through May 1996 or for the period June 1, 1995, through May 30, 1996. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, 1996, will need to have met the substantial use test for the period August through December 1996, or for the period

August 1, 1996, through July 31, 1997, the period selected being at the taxpayer's option, and for the calendar year 1997 and each calendar year thereafter in order to retain the use tax exemption.

(f) The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department of revenue. The methods are:

(i) Line crossing. The line crossing method compares the number of interstate for hire hauls made by a particular motor vehicle or trailer to the total number of for hire hauls. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) Mileage. The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul which requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) Revenue. The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) Other. Any other method may be used when approved in advance and in writing by the department of revenue.

(g) The following examples show how the methods of determining substantial interstate use would be applied to various situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the tractor/trailer rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be an intrastate haul since truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) AA Express operates one tractor/trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the tractor/trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) BDC Hauling operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the tractor/trailer rig. Under the mileage method, twenty-eight percent of the tractor/trailer's usage was in interstate hauling.

(v) GV Trucking operates one tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the tractor/trailer rig. Under the revenue method, twenty-five percent of GV's usage of the tractor/trailer rig was in interstate hauling.

(vi) XYZ Trucking operates a single tractor/trailer rig which has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington and another for delivery to Portland, Oregon. Upon delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, the Seattle to Kent haul intrastate. If using the mileage method the mileage associated with the Seattle to Portland and Kent to Portland hauls would be combined to determine total interstate miles, even though the rig made only one trip to Portland. If using the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The mileage and/or revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, use tax liability for trailers must be determined on the basis of those records. However, it is recognized that some motor carriers have no system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. These motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors.

(a) Under this method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. However, if two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased most nearly to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the review period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that review period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year 1996. Use tax should be reported on the last tax return filed for 1996 with the taxable value based on the value of the truck at January 1, 1996.

(a) The department of revenue will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) The following examples show how use tax liability would be determined in typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, 1996. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul which identifies each truck/tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting therein persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, in reviewing this journal for the 1997 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its December 1997 excise tax return, based on the fair market values of the two trailers as of January 1, 1997. Since the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in hauling for hire.

(ii) DB Carriers is a motor carrier which is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, 1997. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method for determining interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul which identifies each truck used on a per unit basis. This journal is reviewed at the end of the 1997 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its December 1997 excise tax return, based on the fair market value of the truck as of January 1, 1997. DB Carriers may not compute the use tax liability based upon the December 31, 1997, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this section).

(a) If the leased vehicle does not meet the substantial use requirement during the "view period," the use tax applies only to the portion of the lease payment which is for use in Washington during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining instate and out-of-state use. For the purposes of determining instate and out-of-state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are instate miles, notwithstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual instate and out-of-state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out-of-state use. Use tax will be determined for each "view period." For example, if a truck was leased for the years 1996 and 1997 and failed to meet the substantial use requirement in 1996, but met the requirement in 1997, use tax would only be due for the usage in Washington which occurred in 1996.

(b) The following examples show how this method would be applied to typical situations. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) BG Hauling is a for hire carrier which on January 1, 1996, enters into a lease agreement for a truck without operator. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year 1997. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January 1997. However, BG Hauling may report use tax only on that portion of each lease payment attributable to actual instate use, provided it maintains accurate records substantiating the truck's instate and out-of-state activity. Only mileage incurred while actually outside Washington will be considered out-of-state mileage. If BG Hauling continues to lease this truck in 1998, usage will again be reviewed for that period and use tax may or may not be due for the 1998 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, 1996. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the 1997 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax upon the amount of lease payments made during 1997 at the time it files its last tax return in 1997. Provided accurate records are maintained to substantiate instate and of out-of-state use, MG may remit use tax only upon that portion of each lease payment attributable to actual instate use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all instate activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property which becomes a component part of any motor vehicle or trailer used for transporting therein persons or property for hire. This exemption is available for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles which are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer which is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

(a) For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:

(i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and

(ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.

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